ARTHUR A. GOTSCHALL

IBLA 83-479 Decided December 16, 1983

Appeal from decision of Administrative Law Judge E. Kendall Clarke holding that placer mining operations on lands within a power withdrawal would substantially interfere with other uses of the lands. CA MC 99393.

Affirmed.

1. Mining Claims: Powersite Lands -- Mining Claims: Surface Uses -- Mining Claims Rights Restoration Act

   Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or other purposes.

2. Mining Claims: Powersite Lands -- Mining Claims: Surface Uses -- Mining Claims Rights Restoration Act

   The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

APPEARANCES: Arthur A. Gotschall, pro se; Judy V. Davidoff, Esq., Office of General Counsel, U.S. Department of Agriculture, San Francisco, California, for the Forest Service.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Arthur A. Gotschall appeals from a decision of Administrative Law Judge E. Kendall Clarke, dated February 22, 1983, holding that placer mining operations on lands within a powersite withdrawal would substantially interfere with other uses of the lands. Judge Clarke's decision was issued following a hearing held November 17, 1982, pursuant to the Mining Claims Rights

Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1976). The claim at issue, the Sweat and Tears placer mining claim, was located on September 1, 1981, according to the location notice filed with the Bureau of Land Management (BLM) on November 2, 1981. The claim is located within an area withdrawn under Power Project 2124 as of January 9, 1953, and is within the Plumas National Forest.

Appellant's principal contention on appeal is that much of the testimony at the hearing regarding the impact of placer mining operations on other uses of the land was irrelevant and improper. Appellant asserts that the testimony related to the impact of a large scale placer mining operation rather than the more limited impact of the relatively small scale hydraulic dredging operation which he proposes to conduct.

[1] Section 2 of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), authorizes location of mining claims on lands withdrawn for power development or powersites. The Act requires any person who locates a mining claim on such lands after August 11, 1955, to file a copy of the notice of location in the appropriate BLM land office within 60 days of location. 30 U.S.C. § 623 (1976). A person who locates a placer mining claim on such lands may not conduct mining operations on the claim within 60 days after filing with BLM in order to give the Secretary the opportunity to decide whether a hearing should be held on the question of "whether placer mining operations would substantially interfere with other uses of the land included within the placer mining claim." 30 U.S.C. § 621(b) (1976). If the Secretary decides to hold a hearing, mining operations on the claim must be suspended until the hearing has been held and an appropriate order issued which

> shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to these operations; or (3) a general permission to engage in placer mining.

30 U.S.C. § 621(b) (1976). See also 43 CFR Part 3730.

At the November hearing, the Forest Service's expert witness, Gerald Bertagna, testified that large scale placer mining activities on appellant's claim would substantially interfere with other uses of the land (Tr. 13-14). The construction of roads would cause slippage of material into the adjacent stream from the cut banks and slopes (Tr. 16-17). Testimony was presented that on the south side of the claim the major impact would be in the areas which would be used for locating settling ponds, open pit excavation, and equipment storage where timber would have to be removed with a resultant disturbance of the growing soils which would be mixed with gravel (Tr. 17-18). Debris going into the Feather River would create additional turbidity and sediment load which would reduce the water quality and impair the habitat for fish in the stream. The increased sediment load would cover the spawning gravels and interfere with the reproductive processes of the fish (Tr. 18). The mining claim is located within the boundaries of two timber sales. Mining

operations would interfere with conduct of the timber sales and with activities required for management of the lands for timber production (Tr. 19). Appellant failed to rebut the testimony of Mr. Bertagna.

We note that while the subject lands are withdrawn for powersites or power development, the phrase "other uses of the land included within the placer claim" in section 621(b) of the Mining Claims Rights Restoration Act of 1955 is not restricted to such uses. Although the Act applies by its terms to land within powersite or power development withdrawals, all uses of the land are to be considered in determining whether placer mining operations will substantially interfere with the use of the land. Robert E. Ehrman, Jr., 69 IBLA 290, 293 (1982); United States v. Cohan, 70 I.D. 178, 179 (1963). In fact, many previous decisions considering whether to prohibit placer claims on land within powersite classifications have been concerned with uses other than powersites or power development. Robert E. Ehrman, Jr., supra, (use of the land for timber production and recreation); United States v. Pettigrew, 54 IBLA 149, 88 I.D. 453 (1981) (use of the adjoining river for rafting activities); United States v. Steward, 54 IBLA 67 (1981) (use of the land for timber harvests and recreational activities); United States v. Weigel, 26 IBLA 183 (1976) (use of the land and river as breeding area for game fish and animals); United States v. Western Minerals & Petroleum, Inc., 12 IBLA 328 (1973) (use of the land for watershed). Therefore, placer mining which would substantially interfere with timber production or other use of the withdrawn land is properly prohibited.

[2] The record supports Judge Clark's decision that mining activities on the subject claim would substantially interfere with timber production, recreational uses, water quality, and fishery resources of the lands. In so holding, we do not necessarily reject appellant's assertions that his personal mining operation would not interfere with other uses of the land. Assuming, arguendo, that the claimant is correct in this respect, the issue before us is not whether appellant's mining operations would substantially interfere with other uses of the land, but rather whether normal placer operations carried on without restriction would so interfere. United States v. Weigel, supra at 186. The Mining Claims Rights Restoration Act of 1955 allows the Department only three alternative courses of action. As we have already noted, those three alternatives are: (1) To bar any placer mining activity; (2) to allow such mining activity without restriction; or (3) to allow placer mining with the restriction that the land be restored to its former condition after the cessation of mining.

The reason for this "all or nothing" approach with respect to placer mining on powersite or power development lands was explained in United States v. Bennewitz, 72 I.D. 183, 188 (1965):

> The statute permits the Secretary to act only once. He cannot issue an order now allowing unrestricted mining on the basis of a one or two dredge operation and then, if additional dredges are added or larger ones are substituted or a totally different type of operation is adopted, issue an order prohibiting mining. He can act only once, either to permit or prohibit.

> Because his course of action is so limited, to avoid defeating the purpose of the act, he should be able to base his decision not only on what the claimant proposes to do but also on what the claimant or his successor may be able to do in the way of placer mining.

After having studied the record and hearing transcript we are drawn to the conclusion that Judge Clarke was correct in his determination that unrestricted placer mining on the withdrawn land would have a serious effect on the other resources of the land and, therefore, substantially interfere with other uses thereof. In light of the potential detriment to other resource values, the only order that may be issued is to prohibit placer miner operations on the claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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C. Randall Grant, Jr.
Administrative Judge

We concur:

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Douglas E. Henriques
Administrative Judge

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James L. Burski
Administrative Judge